



Minutes of the Board of Agriculture
December 15, 2020

CALL TO ORDER – The meeting of the Board of Agriculture was called to order on December 15, 2020 at 9:04 a.m. a.m. by Board of Agriculture Chairperson, Phyllis Shimabukuro-Geiser. The meeting was conducted virtually via Zoom due to the current risk of exposure to COVID-19.

Members Virtually Present:

Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture
David Smith for Suzanne Case, Chairperson, Board of Land and Natural Resources, Ex Officio Member
Dr. Nicholas Comerford, Dean of the College of Tropical Agriculture & Human Resources University of Hawaii, Ex Officio Member
Mary Alice Evans, Ex Officio Member
Diane Ley, Hawaii Member
Vincent Mina, Maui Member
Fred Cowell, Kauai Member
Randy Cabral, Member-at-Large
Joe Tanaka, Member-at-Large
En Young, Member-at-Large

Others Virtually Present:¹

18082697130
18085219500
18087571677
Adrian Kamali'i
Andrew Goff, DAG
Anonymous (2)
Arumugaswami
Becky Azama, HDOA/PQ
Brandi Ah Yo, HDOA/ARMD
Brian Kau, HDOA/ARMD
Bryan Yee, DAG
Calla
Chelsea Jensen
Cindy Evans
Darwin Inman
Dave Corrigan
Elisabeth
EO
Ferrelli Daste
Gail and Clarence Baber

¹ The identification of the public members is based on their sign-in name, but are not verified.

1 George Nitta
2 Harrison Goo
3 Heath Williams, HDOA/Chair
4 James Tallman
5 James Toma, DOH
6 Janelle Saneishi, HDOA/Chair
7 Jodi Kimura Yi, DAG
8 Jonathan Ho, HDOA/PI
9 Joyce Wong, HDOA/ARMD
10 Kairee Lima
11 Keith Otsuka, HDOA/QAD
12 Kevin Hoffman, HDOA/PI
13 Kimberli Yoshimoto
14 Laksmi Abraham
15 Leo Obaldo, HDOA/QAD
16 Lise Madson
17 Michael Iosua
18 Mimi
19 Morris Atta, HDOA/Chair
20 Murakamiws
21 Noni Putnam, HDOA/PI
22 Patricia Tummons
23 Pegs Drewry
24 Peter Fay
25 Ray Maki
26 Roy Hasegawa, HDOA/ARMD
27 Sean Lester
28 Shaydee J
29 Shelley Choy, HDOA/QAD
30 Shirley Kinoshita
31 Stephanie Salmons
32 Thomas Walsh
33 Trenton Yasui, HDOA/PI
34 W Rudner
35 Yuki Lei Sugimura, Maui County Councilmember
36
37

38 II. APPROVAL OF MINUTES FROM 10/27/20 MEETING

39
40 Motion to Approve 10/27/20 Minutes: Mina/Cowell

41
42 Board Members Ley, Young and Smith were not in attendance at the 10/27/20 meeting and
43 asked to be recused from the vote. Board Member Cabral was not in attendance when the vote
44 was taken.

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46 Public comments: None

47 Vote: Approved 6-0

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III. INTRODUCTIONS

None.

IV. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION

A. AGRICULTURAL RESOURCE MANAGEMENT DIVISION

1. Request for Consent to Assignment of General Lease No. S-6005; Vene Luangraj, Lessee/Assignor, to Thoune Hongphao, Assignee; TMK: 1st Div/5-6-006:033; Lot 5, Kahuku Agricultural Park, Koolauloa, Kahuku, Island of Oahu, Hawaii

Roy Hasegawa, HDOA/ARMD, presented testimony as submitted.

Staff Recommendation: Approval

Motion to Approve: Evans/Cabral

Public Testimony: None

Discussion:

Board Member Mina questioned whether 3% gross proceeds would be added to the current rent. Mr. Hasegawa answered that additional rent is only due if the gross proceeds is higher than the base rent. Board Member Mina voiced concern about the economic hardship on the farmer. Mr. Hasegawa said he has a young manager and the farm is up and running.

Vote: Approved, 10-0

2. Request to (1) Rescind Prior Board Action Approving Assignment of General Lease No. S-4877; Toshio Sugita and Kenneth Y. Ibara, Lessee/Assignor, to Gail K. Okimoto, Assignee; and (2) Consent to Assignment of General Lease No. S-4877; Toshio Sugita and Kenneth Y. Ibara, Lessee/Assignor, to Glory Herb Hawaii, LLC, Assignee; TMK: 1st Div/8-5-005:009, Puea, Waianae, Island of Oahu, Hawaii

Roy Hasegawa, HDOA/ARMD, presented testimony as submitted.

Staff Recommendation: Approval

Motion to Approve: Evans/Tanaka

Public Testimony: None

Discussion:

Board Mina asked and Mr. Hasegawa confirmed that Glory Herb is certified organic. Board Member Young questioned if procedurally, when a prior action is rescinded, an agreement with

1 the current assignee was required. Mr. Hasegawa explained that in 2014, staff drafted the
2 assignment to Ms. Okimoto, however, an agreement on the consideration could not be reached.
3 Currently, Mr. Ibarra wishes to assign the lease to Glory Herb and in order to proceed, the
4 current assignment to Ms. Okimoto must be rescinded. before the lease can be assigned to
5 Glory Herb.
6

7 Board Member Smith asked if the current lessee was selling their position to a new lessee. Mr.
8 Hasegawa answered in the affirmative. Ms. Cindy Evans, former Hawaii Island State
9 Representative compared the transaction to selling a spot at the boat harbor and asked whether
10 the State would get anything from the sale and if there had been discussion on charging for
11 transactions like assignments of lease. Ms. Linda Murai answered that the only charge for an
12 assignment or any kind of documented action is a \$30 fee per document if the transaction
13 closes/records. The amount is set by administrative rules. Board Member Mary Alice Evans
14 clarified that the consideration is for improvements that the prior lessee has invested in the lot
15 and pointed out that the difference between the boat harbor slip and the ag lease is that the
16 current lessee has invested sweat equity and cash and the monetary consideration is for
17 improvements or inventory that is being transferred. Mr. Brian Kau added that the division does
18 a consideration analysis and if it shows that the assignor has invested more or equivalent to the
19 consideration fee, the department does not take advantage of any kind of participation.
20 However, when the tenant makes a huge profit, the department will take part of the profit to
21 discourage land banking.
22

23 Vote: Approved, 10-0
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25

- 26 3. Request for Consent to Assignment of General Lease No. S-5501; Doris E. Naki
27 and Naki Farms LLC, Lessor/Assignor, to Naki Farms LLC, Assignee; TMK: 1st
28 Div/4-1-010:029, Waimanalo Farm Lots, Koolaupoko, Waimanalo, Island of
29 Oahu, Hawaii
30

31 Roy Hasegawa, HDOA/ARMD, presented testimony as submitted.
32 Staff Recommendation: Approval
33

34 Motion to Approve: Cabral/Evans
35

36 Public Testimony: None
37

38 Vote: Approved, 10-0
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- 41 4. Request for Approval to Sublease Between the Hamakua Agricultural
42 Cooperative, Lessee/Sublessor, and Jason DeLuz, Sublessee; General Lease
43 No. S-7008, TMK: 3rd Div/4-3-005:013(por), Lot Nos. W02, W03, W04, W06, and
44 W07; General Lease No. S-7009, TMK: 3rd Div/4-3-005:014(por), Lot Nos. 15
45 and 18; General Lease No. S-7011, TMK: 3rd Div/4-3-0005:018(por), Lot Nos.
46 W01 and W09, Hamakua Pohakuhaku and Kemau 1st, Hamakua, Island of
47 Hawaii

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2 Joyce Wong, HDOA/ARMD, presented testimony as submitted.
3 Staff Recommendation: Approval
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5 Motion to Approve: Ley/Tanaka
6
7 Public Testimony: None
8
9 Discussion:
10 Board Member Mina asked who maintained the roads leading into Ag Park and if there were
11 any issues going in and out of the area. Ms. Wong replied that she does not know of any issues
12 and it is up to the Co-op to do the maintenance.
13
14 Vote: Approved, 10-0
15
16
17 5. Request for Approval to Sublease Between the Hamakua Agricultural
18 Cooperative, Lessee/Sublessor, and Rose Cypret, Sublessee; General Lease
19 No. S-5551, TMK: 3rd Div/4-6-003:001, 002, and 014(por), Lot 26, Honokaia,
20 Hamakua, Island of Hawaii
21
22 Joyce Wong, HDOA/ARMD, presented testimony as submitted.
23 Staff Recommendation: Approval
24
25 Motion to Approve: Ley/Mina
26
27 Public Testimony: None
28
29 Discussion:
30
31 Board Member Cabral asked how the lease rent was determined. Ms. Murai replied that lease
32 rents for the sublessees are determined by the Co-op and lease rents for the general leases are
33 determined by an independent appraiser.
34
35 Board Member Ley asked if there was a set percentage of pasture leases vs. vegetable and fruit
36 crop leases. Mr. Kau answered that when the Hamakua leases were reviewed, the parcels
37 were assessed for diversified or pastoral ability. ARMD determined the best use for the land.
38 He added, if a person leases a diversified parcel and runs cattle, if approved, the tenant has
39 made a choice and the division would not necessarily adjust the rent to a pasture rate if it had
40 been determined the parcel could support diversified ag.
41
42 Vote: Approved, 10-0
43

1 6. Request for Approval of Settlement and Amendment of the Reopened Annual
2 Rental for General Lease No. S-5586; Big Island Dairy LLC, Lessee; TMK: 3rd
3 Div/3-9-001:0001 & 002, 3-9-002:007 & 0008, 4-1-001:006 and 4-1-005:001;
4 O'okala, North Hilo, Island of Hawaii

5
6 Linda Murai, HDOA/ARMD, presented testimony as submitted.

7 Staff Recommendation: Approval

8
9 Motion to Approve: Evans/Comerford

10
11 Public Testimony: None

12
13 Discussion:

14
15 Board Member Evans questioned if the dairy was closed and if they would retain the lease until
16 the 2028 rent reopening. Ms. Murai answered in the affirmative and added that they are in the
17 process of selling the herd.

18
19 Board Member Ley questioned, and Ms. Murai confirmed that Big Island Dairy (BID) would
20 continue to pay the lease even if they are no longer in business. She also questioned the
21 nature of the disagreement on the claims. Ms. Murai answered one was the timeliness of the
22 notice and the second was the amount of the new annual rent. She clarified the reopening
23 amount started on 6/4/2018 but BID was not notified until 12/2019. The reason for the delay was
24 that the appraisals are requested as a group rather than piecemeal as a cost saving measure.
25 Board Member Ley asked about the concern over the new lease rent. Ms. Murai replied that
26 they signed a letter of agreement which included the spreadsheet and made a payment to catch
27 up on back rents.

28
29 Board Member Ley asked if the lessee was required to let them know that they are seeking to
30 assign the lease. Ms. Murai explained that although not a requirement, the lessee usually
31 informs the division that they are seeking to assign the lease. When they have a purchase
32 agreement, the lessee will submit the application and purchase agreement to ARMD so that
33 they can qualify the intended lessee/farmer and complete the assignment. In BID case, the
34 division is in communication with the lessee.

35
36 Board Member Evans asked, and Ms. Murai acknowledged that BID had complied with
37 Department of Health's Notice of Violation conditions.

38
39 Board Member Smith questioned the negotiations on the lease rents and asked why it took so
40 long to figure out the increase. Ms. Murai again explained the appraisal process and that the
41 result of the negotiations was the settlement which waived the lease rent. She added that
42 delayed notification does not absolve the lessee from paying rent. Board Member Smith noted
43 that they lost money trying to save money.

44
45 Vote: Approved, 10-0

46
47

7. Request for Approval to Award Leases to Various Awardees and Back-up Positions; TMK Nos. 1st Div/8-5-034:001, 3rd Div/1-5-116:011, 4th Div/1-9-002:001, 013, 020 and 045, Islands of Oahu, Hawaii, and Kauai S/B Big Island Dairy

Linda Murai, HDOA/ARMD, presented testimony as submitted.
Staff Recommendation: Approval

Motion to Approve: Cowell/Evans

Public Testimony: None
Discussion:

Board Member Young questioned the process for generating interest in the parcels. He voiced concern that there are so many displaced farmers and wondered why they would not want to relocate. Ms. Murai answered that they place a disposition ad in the newspaper as required by rules, which includes only the TMK. Soil analysis is not included; however, staff is available to answer questions. The division also maintains a database of interested farmers and farmers are informed when lots become available.

Board Member Young commented regarding the ARMD agenda, he respects the work done on the strategic plan document and would like to see what kind of progress is being made on the metrics per the strategic plan.

Board Member Ley acknowledged that big island staff has been helpful when connecting producers affected by lava flows with DOA staff by connecting those wanting to stop farming due to age and health with farmers who were affected by the lava flows. She encouraged looking into other sectors and to modernize communication by using press releases and social media to reach out into the community.

Board Member Mina stated that Sharon Hurd does a good job disseminating information. He also questioned the infrastructure, water meters and size of the lots. Ms. Murai was not sure but stated that the applicants must do their due diligence before signing the lease.

Board Member Young agreed with Board Member Mina and added that it should be easy and transparent for farmers to know what they are getting into. As to the designation of the lot, he said that there a lot of new containerized growing systems which do not need to adhere to the designations of pastoral or diversified ag.

Ms. Murai explained that during the award process, the applicant/awardee is given the right of entry for 6 months. They can go onto the lot and see if the conditions (water, soil, electricity) are favorable. They have no obligation to move forward with the long-term lease.

Vote: Approved, 10-0

1 B. PLANT INDUSTRY DIVISION

2
3 Plant Quarantine Branch

- 4
5 1. Request to: (1) Allow the Importation of One Vasa Parrot, *Coracopsis vasa*, an
6 Animal on the List of Restricted Animals (Part B), by Permit, for Research, by
7 Lise Madson; and (2) Establish Permit Conditions for the Importation of One
8 Vasa Parrot, *Coracopsis vasa*, an Animal on the List of Restricted Animals (Part
9 B), for Research, by Lise Madson.

10
11 Noni Putnam, HDOA/PQ, presented testimony as submitted.

12 Staff Recommendation: Based upon the recommendations and comments of the Advisory
13 Subcommittee on Land Vertebrates, and the Advisory Committee on Plants and Animals' motion
14 to move this request to the Board without a recommendation to approve or disapprove this
15 request, in conjunction with the applicant's recent changes to the request that were not reviewed
16 by either the Subcommittee or Committee, the PQB is not making a recommendation on this
17 request.

18
19 Motion to approve the importation of one Vasa parrot to research purposes subject to proposed
20 permit conditions. Evans/Smith

21
22 Public Testimony:

23 Ms. Lise Madson, resident of Mountain View, HI, Applicant

24
25 Discussion:

26 Board Member Evans asked whether the bird would be pinioned. Ms. Madson explained that
27 pinioning is removing part of the wing including the bone and is illegal in some countries. She
28 feels wing trimming is enough. Pinioning is done for birds who are loose. This bird is
29 microchipped and will be kept in a locked double door system. There is a low risk of escape
30 and no danger exists if it does escape.

31
32 Board Member Comerford asked the research value of a one animal experiment. Ms. Madson
33 replied that it is an under-researched bird. When asked whether she would be a researcher or a
34 research technician, she replied that under TTOUCH, she would work on a book directly in
35 association with Linda Tellington-Jones, as a professional legacy. With Alex studies, she would
36 collect data to be interpreted. Board Member Comerford said that it appeared she would be a
37 research technician and when asked if she published anything, she replied, "no". Board
38 Member Comerford asked how much is related to research and how much support animal. Ms.
39 Madson replied 100% to both. Emotional support animal (ESA) was denied by PQB because
40 ESA's are considered personal not private. Board Member Comerford voiced disappointment
41 that the committee did not make a recommendation to the board.

42
43 Board Member Mina said that based on her passion and research, normally he would have a
44 tendency to vote in favor of similar projects, but he was not supportive of bringing in an invasive
45 species.
46

1 Board Member Tanaka asked why the animal was restricted. Mr. Ho replied that PQB was
2 unable to find specific reference or any details as to why the bird was placed on the restrictive
3 list Part B. Results of internet research found that the bird is rare in cultivation, does not seem
4 to be established outside of its native range, is difficult to breed, and eats fruits and seeds in its
5 native range.

6
7 Board Member asked how to un-restrict. Mr. Ho answered to make the change on the next
8 request.

9
10 Chair referred to the submittal which stated that a letter/resume should contain information on
11 the source of funding, be peer reviewed, be conducted by an approved institution, meet IACUC
12 requirements. She questioned whether the criteria had been met. Mr. Ho replied that when the
13 submittal was presented to committee, there was a lot of discussion regarding the research
14 component and collaboration with University researchers.

15
16 Chair asked whether the subcommittee and review by P&A approved having research done in a
17 residence vs. research facility. Mr. Ho said there were no specific concerns regarding the
18 facility. Ms. Madson replied that research in a home environment provides greater security. If
19 the animal is in a different facility, there is a need to safeguard against theft and it is cost
20 prohibitive.

21
22 Board Member Young asked if the research would continue for the life of the parrot. Ms.
23 Madson replied that with the Alex Foundation, the research would have to be completed,
24 written, and peer reviewed. For the African Gray, the Alex Studies went for 30 years. When
25 asked how long a parrot lives, she said probably 40 years. If something happened to her,
26 conservationists would look after the bird, if not pinioned.

27
28 Board member Young commented that staff and subcommittees specialize in specific areas and
29 asked if the Board is required to think about allowing research in terms of direct benefit to the
30 agricultural sector. Mr. Ho replied that there is no requirement that the research be beneficial to
31 agriculture.

32
33 Chair added that Dr. Sheila Conant stated if a bird is permitted to come in it would set a
34 precedent for Division of Forestry and Wildlife (DOFAW). Mr. Smith commented that the
35 DOFAW list restricts all parrots, so the entire family was put on list. He added that it looked like
36 a pet parrot and questioned whether research was being asserted as a rationale to bypass the
37 list banning the importation of parrots.

38
39 Board Member Mina said that he does not want to see precedent set to abuse the system.

40
41 Board Member Evans said that she did not believe that the importation of one parrot poses any
42 threat to Hawaii agriculture.

43
44 Mr. Ho said that the DOFAW list restricts interisland movement of birds (movement of wild life).
45 Ms. Madson's bird is not wild, therefore, they come before PQ for import purposes for research.
46 A lot of the discussion in P&A was regarding whether the research was valid. Conditions that

1 PQ drafted for the Vasa Parrot would require that every other applicant come before the board
2 for administrative approval.

3
4 Board Member Evans restated her motion: Motion to approve request to import one Vasa
5 parrot for research purposes subject to conditions on 23-27 pages.

6
7 Vote: Failed, 2-7 (Chair did not vote)

8
9 DAG Yee advised that a motion to disapprove was required.

10
11 Motion to disapprove the request for import for research purposes: Smith/Tanaka

12
13 Board Member Young spoke in support of disapproval. He commented that it is up to DOFAW
14 and DOA to gauge threat level of individual bird but felt that the department should be more
15 proactive about research rather the reactive. If research is going to be allowed, the board
16 should be able to make an informed decision by looking at the full research design and having
17 the opportunity to look at the validity.

18
19 Board Member Smith said he is voted against the project because he felt the research
20 component was not viable.

21
22 Vote: Approved, 9-1 (Motion to disapprove the request for import for research purposes)

- 23
24
25 2. Resubmittal of a Request for Review of the Petition from Lise Madson to Initiate
26 Administrative Rule Making and Rule Amendment to Chapter 4-71, Hawaii
27 Administrative Rules (HAR), to Change the List Placement of Vasa Parrot,
28 *Coracopsis vasa*, From the List of Restricted Animals (Part B) to the List of
29 Conditionally Approved Animals.

30
31 Jonathan Ho HDOA/PQ, presented testimony as submitted.

32
33 Staff did not make a recommendation as it was their understanding that the Board wants to
34 conduct a full review and see everything going through the process before making a
35 recommendation. Referring to Board Member Smith's prior question, ESA's are not allowed if on
36 the restricted Part B list, however, if approved, ESA could be a conditionally approved animal—
37 individual possession is allowed.

38
39 Board Member Evans questioned if the review had been completed and if not completed, she
40 would recommend deferral.

41
42 Mr. Ho replied that the branch did not notify the petitioner in writing within the 30-day timeframe,
43 resulting in automatic rulemaking. The board can initiate rulemaking immediately. The Board
44 can deny and direct PQ to go through the review process and provide information.

45
46 Chair stated if the Board denies the petition, the Board could direct PQ to route the petition
47 through the review process and come back to the Board at another meeting or could deny but

1 say the Board would consider if the petition is moved through the subcommittee and P&A
2 review process.

3
4 Board Member Evans said she wanted to defer because there is a lack of sufficient reasons for
5 denial.

6
7 Motion to defer making a decision and direct Branch to go through the review process and make
8 a recommendation for or against at a subsequent Board Meeting. Evans/Tanaka

9
10 Public Testimony:

11
12 Ms. Lise Madson testified on the procedural history of her request as submitted. She
13 encouraged moving from the Restricted Part B list to conditionally approved based on the time
14 elapsed since initial request was made.

15
16 Board Member Cabral asked how long the review would take. Mr. Ho replied that the earliest
17 would be February for a full review.

18
19 Vote: 10-0
20
21
22

23 V. OLD BUSINESS

24 1. Discussion and Decision Making on the Delegation of Authority to the 25 Chairperson. 26

27
28 The Quality Assurance Division (QAD) was not able to present at the last meeting due to time
29 limitations.

30
31 Leo Obaldo, HDOA/QAD, presented as submitted. QAD did not request any additional
32 delegations to the Chair.

33
34 Board Member Mina asked if weights and measures of gas stations were included. Chair
35 replied that Measurement Standards performs those duties. She added that many states
36 consider weights and measures important to agriculture which is the reason why it falls under
37 DOA. The farmers and consumers rely on the accuracy of the weight because it determines
38 price.
39

40 Board Member Cabral said that he thought the discussion would be about placing items on the
41 agenda as part of the delegation. He said he was asked by a Big Island constituent farmer for
42 something to be placed on the agenda. Chair had indicated that it was the Chair's prerogative
43 to approve the agenda item. The issue was whether it was in the Board's purview to place
44 something on the agenda. Chair explained that the Board Members have the authority to
45 request items be placed on the agenda. Sometimes, when the department is handling
46 confidential information or is involved in a negotiation, the Chair can deny the item being placed
47 on the agenda.

1
2 DAG Yee clarified that a Board Member can request an item be placed on the agenda.
3 However, it is the prerogative of the Chair to approve placing the item on the agenda. Chair
4 asked Board member Cabral if the item could be discussed at the next Board Meeting in
5 Executive Session.

6
7 Board Member Evans said that she thought the agenda item would lead to delegating some
8 items that were brought to the Board on a regular basis to the Chair. She questioned whether
9 there would be a recommendation of items that could be delegated to the Chair. Chair
10 answered that at the Board Meeting on October 27, 2020, motions to approve delegations were
11 reflected in the minutes. For divisions that requested delegation, action was taken.

12
13 DAG Yee explained that the larger agenda items is whether items should be delegated. QAD is
14 not recommending action.

15
16 2. Department of Agriculture's response to Coffee Leaf Rust.

17
18 Comments were made on the written report detailing the Department's response to Coffee Leaf
19 Rust (CLR)

20
21 Board Member Cowell thanked the Department for enacting quarantine. Industry is still
22 confused on how the quarantine is being done but they are working through it. The industry has
23 questions regarding propagating rust resistant coffee grown in the State and will be going back
24 to PQ. Another aspect industry is looking at is moving toward approval of systemic fungicides.

25
26 Board Member Cabral commented on the good work being done by the Department. Chair said
27 updates would continue if Board desires.

28
29 Board Member Mina asked about research being done using beneficial fungicides. The
30 beneficial fungal network provided by nature should be addressed and he would like the
31 department to look at biological applications.

32
33 Dr. Hoffman said he has not heard about research using beneficial fungi but can bring it up to
34 collaborators as an area to explore. USDA has formed a cross functional working group and
35 they are working on mitigation strategies and guidelines on ways to respond to the disease.

36
37 Public testimony:
38 Mr. George Nitta Jr. (Shirley Kinoshita) testified on the benefits of Ethanol to kill the virus. He
39 will provide contact information for staff to contact him.

40
41
42 3. Discussion regarding South Maui Gardens and hemp licensee updates.

43
44 Ms. Shelley Choy, HDOA/QAD presented the South Maui Gardens (SMG) Hemp Producer
45 Update as submitted in the written presentation.

46

1 Mr. James Toma, Department of Health, Noise Section supervisor, reported on what he
2 observed at South Maui Gardens. He stated that according to Chapter 46, Community Noise
3 Control, allowable levels of noise control are based on the zoning of the property. The property
4 is agriculture zoned therefore 70 db, 24/7 is allowed. Inside the property line, readings were in
5 the high 50's. A second reading taken at night with fans running at 50% was in the low 50's; in
6 both cases well within 70 db.

7
8 Mr. Toma said that for DOH to regulate noise, it requires specialized equipment, experience,
9 and training. They take certification classes and the equipment must be ANSI certified, which is
10 the standard that the industry uses. If the Department of Agriculture wanted to enforce noise
11 rules, they would need to buy equipment and get training.

12
13 He also commented on low frequency noise and official standards to regulate noise. In
14 reference to a statement that DOH rules are archaic, he said the rules work except when zoning
15 is mixed or when the use of the land is not appropriate to the zoning. A lot of the information
16 presented was based on residential zoning. There are no rules in the States regulating low
17 frequency. The information presented was from Europe and he was not able to verify the
18 numbers that were presented as there were no jurisdictions which enforced the levels. In terms
19 of health effects, they have not found conclusive research that shows low frequency causes
20 certain conditions. He said that at higher levels, 90 db+, physical conditions could result, but
21 there is not enough research for DOH to act.

22
23 He acknowledged that the bill identifies hemp farms but stated that the reality is that if it is put
24 into place, other people who have issues with ag may come forward and want their issues
25 addressed. He gave the examples of coffee mills running 24/7 for months during harvest
26 season and windmills on ag land. He stated that although the bill is specific, it might open the
27 door for other issues in the future.

28
29 Chair reiterated that there would be no action or decision making at the meeting; information is
30 for the board only.

31
32 Board Member Ley commented that it looked like the parties had come together to address
33 concerns and asked if the Department could bring in mediation services.

34
35 DAG Bryan Yee asked that questions be restricted to Mr. Toma's presentation since public
36 comments still needed to be heard.

37
38 Board Member Young asked if anything that the Department of Health regulated was also
39 regulated by another state department. Mr. Toma said none that he could think of.

40
41 Public Comments:

42
43 Chair stated that approximately 69 written communications were received from the public.

44
45 Mr. Sean Lester, 31-year Maui resident, said he believes that SMG is not utilizing the land
46 correctly. He voiced displeasure with Mr. Toma's comments and asked for a working group to
47 find solutions.

1
2 Ms. Gayle Baber, hemp and food farmer in Kohala, stated that the land use issue between SMG
3 and the neighbors is isolated and is creating an expense for existing license holders. She
4 agreed with Mr. Toma about broader land use issues and farmers should not be penalized when
5 most of the licensees are compliant. The Hawaii Hemp Farmers Association suggests a Hemp
6 Advisory Board be created.

7
8 Maui Councilmember, Yuki Lei Sugimura said that the community is in her jurisdiction and she
9 has had communication with the community and visited the site with Representative Kyle
10 Yamashita. The community and SMG have not been able to find a solution. She asked if there
11 was a mediator who could hear both sides. The neighbors feel sound decibels are agonizing.
12 SMG provides jobs and must figure out how to live with the community. She felt a mediator
13 could help.

14
15 Mr. Peter Fay commented that dbc is not regulated in Hawaii. It is regulated in England and
16 Sweden. He stated that the 70 db limit for ag land is dba and there is no regulation for dbc
17 noise. He added that Mr. Toma measured both dba and dbc levels. He said he believes that
18 the community gave the board the science that they asked for.

19
20 Shaydee J, Kaneohe resident commented regarding amount of water being used for hemp.

21
22 James Tallman, Director of Hemp Division for SMG. He stated that experts were consulted as
23 to design, rules and regulations before growing hemp. SMG grows in greenhouses as
24 consumers want hemp grown without insects, contaminants and mold. They do not use
25 pesticides or fungicides. Rule changes would put them out of business. They oppose 24" fans,
26 and it would take 16-32 fans which would be louder. He could not find information on the 30
27 dbc frequency. Lowering db to 50 at night would cause mold issues and destroy crop.

28
29 Thomas Walsh, President of Operations, SMG was available to answer questions.

30
31 Ray Maki, President of the Hawaii Hemp Farmers Assoc., stated that it was one complaint that
32 triggered the events. He requested that rules regarding nuisance be directly related to existing
33 state laws.

34
35 Board Discussion:

36 Chair said the request for a mediator or working group would be taken up in January's meeting
37 and that the Department would need to also consider the resource requirement.

38
39 Board Member Ley referred to the USDA funded, Hawaii Agricultural Mediation Program which
40 could take the department out of the loop at no cost. She said they have a representative on
41 Maui and are quasi housed under the department. Board Member Ley also questioned whether
42 the department was planning to create a program now that USDA has superseded the State
43 Program. Chair answered that the Board would be coming back in January because of a
44 motion passed at the September Board Meeting. The motion stated that the Department work
45 on addressing nuisance concerns and make recommendations to the board on any proposed
46 changes to the interim rules adopted in September or whether to abide with the interim rules

1 passed in September. The request for the informational update was requested by Board
2 Member Mina.

3
4 DAG Yee concurred that the agenda item was to present information to board for their
5 consideration in January, to receive feedback, if any, and to inform the public of the information
6 that exists currently. Action would be contemplated in January.

7
8 Chair noted that the Department has used Hawaii Mediation Program, sometimes at no cost,
9 but if their budget is exhausted, then there is a fee for their services.

10
11 Board Member Mina asked if Mr. Walsh lived on the property. Mr. Walsh answered that he lives
12 next to the greenhouse with the fans. Board Member Mina echoed the call for mediation
13 services.

14
15 Board Member Mina questioned if the Board had until June to make changes. DAG Yee
16 answered that the Board passed the interim rules which last for 2 years unless permanent rules
17 are passed sooner. The January deadline for nuisance issues was self-imposed. He confirmed
18 that the interim rules could be adjusted until June 2022.

19
20
21 VI. NEW BUSINESS

22
23 None

24
25 VII. ADJOURNMENT OF MEETING

26
27 The meeting was adjourned at 1:49 p.m.

28
29
30
31 Respectfully submitted,

32
33 

34
35 Jan Ferrer
36 Board Secretary

37